

61  
both swimming and running in place, massage, and therapy, having a single seamless enclosure with stairs, and sufficiently long and deep for an adult to swim and stand in, a cavity with treadmill at the bottom with safety walk off ledge, external motor means connected to the treadmill shaft inside the enclosure, swim jets in the front to provide resistance to allow swimming in place, control and safety buttons at the top, treadmill impact absorption means, treadmill adjustment means from above the treadmill, and cavity next to the treadmill cavity for accessing the shaft.

---

#### REMARKS

The examiner has rejected all "Claims 1-6" as "being clearly anticipated by Keller, et al". Applicant respectfully disagrees. Anticipation requires the presence in a single prior art reference of all of the elements of the subject claim. Connell v. Sears Roebuck, 222 F. 2d 1542 (1983).

Applicant suggests that it is not "clear" at all that Keller anticipates and in fact suggests that Keller does not anticipate at all even Claim 1, let alone all claims 1-6.

In Claim 1, the claimed invention is not simply "a hydrotherapy device". It is a specific device claimed with many elements that allow ALL exercises of walking and swimming and running, in the same personal seamless device, with many other elements, including a "seamless" enclosure, not disclosed in Keller. (In fact, neither is the invention obvious in view of

Keller in that Keller teaches away: he states that "a particular advantage of the present invention is its knockdown construction allowing it to be manufactured, stored and shipped in small pieces" (Keller Column 3, line 44), which clearly teaches away from a "seamless" enclosure".

There are more elements in claim 1 that are not disclosed in Keller, any one of which would controvert Keller as anticipating Claim 1. For example, claim one requires that the enclosure be long enough for an adult to swim in at the same time it is deep enough to stand in; it requires swim jets that provide enough resistance to allow one to swim in place (a significant force) whereas Keller doesn't even address the swimming in place objective. (Neither do Leonaggeo or Crandell, which deal with limited hydrotherapy exercise devices); Keller does not disclose a cavity for the treadmill with a flush safety step off ledge (an important feature should one need to quickly exit). Claim 1 alone clearly is not anticipated by Keller et al, as anticipation requires not only every element of the claim, but also requires the entire combination of all elements. Structural Rubber, 749 F. 2d 707; In re; Panduit, 774F. 2d 1082; In re: Gulack, 703 F. 2d 1381.

Recognizing that Keller does not disclose all the elements of claim 1, then claims 2-6 are even less anticipated. These claims include elements of an impact reducing means (claim 2); specific individual energy absorption means (claim 3), treadmill adjustment means (claim 4) and where the treadmill adjustment means is

A

accomplished from above the treadmill (claim 4) so as to allow adjustment without emptying the enclosure; specific wedge shaped member having a threaded screw vertically moving (claim 5); cover plate surrounding the treadmill to allow easy and safe access directly around the treadmill at the bottom around the step off ledge (claim 6) and an access cavity next to the treadmill cavity to gain access to shaft area from inside the enclosure (claim 6).

Keller does not disclose these elements of these claims and the claims should be allowed.

Crandell does not disclose all of the elements of any one claim, and neither does Leonaggeo, for the similar reasons discussed above.

Moreover, none of these teach a compact, personal multi exercise device, that includes swimming in place with powerful jets along with the capability of walking and running, i.e. the combination of all, and in each case, the reference teaches otherwise (specific exercise device for horses, who don't swim (Leonaggio), or a tear down walking unit (Keller), or walking/jogging (Crandell)). Clearly, none show it in the manner claimed in each of Claims 1-6, as amended.

Consequently, with the amendments, applicant suggests that the application should be passed for issuance, and respectfully requests the examiner reconsider the rejection.

A

Respectfully submitted,

Date: 7/24/00

WRIGHT, HENSON, SOMERS, SEBELIUS,  
CLARK & BAKER, LLP  
Commerce Bank Building Downtown, 2nd Floor  
100 E. 9th Street, P. O. Box 3555  
Topeka, Kansas 66601-3555  
(913) 232-2200

By Bruce J. Clark  
Bruce J. Clark, #31,339

CERTIFICATE OF MAILING

I hereby certify that this Response to Office Action, is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

Assistant Commissioner for Patents  
Box Non-Fee Amendment  
Washington, D.C. 20231

on July 24, 2000 (the first business day after Sunday, July 23, 2000).

RECEIVED  
AUG - 13 2000  
TECHNOLOGY CENTER 3100

WRIGHT, HENSON, SOMERS, SEBELIUS,  
CLARK & BAKER, LLP  
Commerce Bank Building Downtown, 2nd Floor  
100 E. 9th Street, P. O. Box 3555  
Topeka, Kansas 66601-3555  
(913) 232-2200

Date: 7/24/00

By Bruce J. Clark  
Bruce J. Clark  
Registration No. 31,339

A